

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JUSTIN OWENS,¹

Plaintiff,

v.

STATE OF NEVADA, *et al.*,

Defendants.

Case No. 2:22-cv-01986-GMN-VCF

SCREENING ORDER

Pro se Plaintiff Justin Owens, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil rights complaint under 42 U.S.C. § 1983 (ECF No. 1-1 (“Complaint”)),² a motion for a preliminary injunction (ECF No. 1-2), and has filed an application to proceed *in forma pauperis* (ECF No. 1). The matter of the filing fee will be temporarily deferred. The Court now screens Plaintiff’s Complaint under 28 U.S.C. § 1915A and disposes of Plaintiff’s motion for a preliminary injunction.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is

¹ The Clerk’s Office listed Plaintiff’s last name as “Owen” when creating the name for this action; however, Plaintiff’s actual last name is “Owens.” The Court will refer to Plaintiff as Justin Owens.

² Plaintiff is attempting to bring a class action lawsuit. (ECF No. 1-1 at 1.) *Pro se* litigants have the right to plead and conduct their own cases personally. See 28 U.S.C. § 1654. However, they do not have the authority to represent anyone other than themselves. See *Cato v. United States*, 70 F.3d 1103, 1105 n.1 (9th Cir. 1997). As such, the Court denies Plaintiff’s request to bring a *pro se* class action lawsuit.

1 immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must
2 be liberally construed. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
3 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
4 elements: (1) the violation of a right secured by the Constitution or laws of the United
5 States; and (2) that the alleged violation was committed by a person acting under color
6 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

7 In addition to the screening requirements under § 1915A, under the Prison
8 Litigation Reform Act ("PLRA"), a federal court must dismiss an incarcerated person's
9 claim if "the allegation of poverty is untrue" or if the action "is frivolous or malicious, fails
10 to state a claim on which relief may be granted, or seeks monetary relief against a
11 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a
12 complaint for failure to state a claim upon which relief can be granted is provided for in
13 Federal Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under
14 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
15 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
16 the complaint with directions as to curing its deficiencies, unless it is clear from the face
17 of the complaint that the deficiencies could not be cured by amendment. See *Cato v.*
18 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

19 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
20 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
21 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
22 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
23 756, 759 (9th Cir. 1999). In making this determination, the Court takes as true all
24 allegations of material fact stated in the complaint, and the Court construes them in the
25 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
26 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
27 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
28 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff

1 must provide more than mere labels and conclusions. See *Bell Atl. Corp. v. Twombly*,
 2 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
 3 insufficient. See *id.*

4 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
 5 that, because they are no more than mere conclusions, are not entitled to the assumption
 6 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide
 7 the framework of a complaint, they must be supported with factual allegations.” *Id.* “When
 8 there are well-pleaded factual allegations, a court should assume their veracity and then
 9 determine whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining
 10 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
 11 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*

12 Finally, all or part of a complaint filed by an incarcerated person may be dismissed
 13 *sua sponte* if that person’s claims lack an arguable basis either in law or in fact. This
 14 includes claims based on legal conclusions that are untenable (e.g., claims against
 15 defendants who are immune from suit or claims of infringement of a legal interest which
 16 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 17 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989);
 18 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

19 II. SCREENING OF COMPLAINT

20 In his Complaint,³ Plaintiff sues multiple Defendants for events that took place
 21 while he was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 1-1 at 1.)
 22 Plaintiff sues Defendants the State of Nevada,⁴ Warden Calvin Johnson, Assistant
 23 Warden Oliver, Assistant Warden Scally, Lieutenant John Doe, and Sergeant John Doe.

25 ³ Inmate George “Ol Skool” Vontress, Jr. helped Plaintiff prepare the Complaint.
 26 (ECF No. 1-1 at 13.)

27 ⁴ While Plaintiff does not list the State of Nevada as a defendant in the Complaint,
 28 he lists it as a defendant in the caption of his application to proceed *in forma pauperis*
 (ECF No. 1 at 1) and in the caption of his motion for a preliminary injunction (ECF No. 1-
 2 at 1). To the extent Plaintiff intends to bring claims against the State of Nevada, the
 Court dismisses with prejudice all claims against the State of Nevada, as amendment
 would be futile. See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 65 (1989) (holding
 that states are not persons for purposes of § 1983).

1 (*Id.* at 2-3.) Plaintiff brings four claims and seeks monetary and injunctive relief. (*Id.* at 7-
2 10, 13.)

3 Plaintiff alleges the following. On August 20, 2020, prison officials transferred
4 Plaintiff to HDSP from Ely State Prison (“ESP”). (*Id.* at 4.) Prior to the transfer, Plaintiff
5 “was programming as a Level I inmate, with Level I privileges.” (*Id.*) After arriving at
6 HDSP, HDSP officials stripped Plaintiff of his Level I privileges and placed him in
7 administrative segregation without any disciplinary hearing. (*Id.*) Plaintiff was placed in
8 belly chains while being moved to the segregated cell. (*Id.*) In addition, HDSP officials
9 told Plaintiff that he could either have 15 minutes on the phone, or he could take a 15-
10 minute shower. (*Id.*) This treatment lasted until October 29, 2020. (*Id.*)

11 During this 70-day period, Plaintiff claims he could not practice his religion, and he
12 could not access the yard for recreation. (*Id.*) Unnamed HDSP officials told Plaintiff that
13 the inmates that transferred from ESP could not use the yard. (*Id.*) On September 1, 2020,
14 Plaintiff asked Lt. Doe and Sgt. Doe why he was placed in administrative segregation and
15 why he lost his Level I privileges. (*Id.*) Sgt. Doe responded and told Plaintiff that Johnson,
16 Oliver, and Scally implemented a restrictive policy concerning any inmates that
17 transferred from ESP to HDSP. (*Id.* at 4-5.) The three wardens thought that because ESP
18 was a maximum-security prison the inmates transferred from it to HDSP were a “threat to
19 the security and safety of HDSP.” (*Id.* at 5.) The inmates from ESP, like Plaintiff, would
20 be stripped of all privileges and be recognized as Level III status. (*Id.*) Lt. Doe and Sgt.
21 Doe told Plaintiff to “pass the word around.” (*Id.*)

22 After this conversation, Plaintiff asked Lt. Doe and Sgt. Doe if they could give him
23 three inmate request forms and the names of all the wardens at HDSP. (*Id.*) A correctional
24 officer brought a copy of the face sheet of the inmate request form. (*Id.*) It appears,
25 however, that Plaintiff did not receive the proper paperwork to file an inmate request. (*Id.*)
26 The correctional officer told Plaintiff that Lt. Doe and Sgt. Doe stated that the correctional
27 officer should only provide a copy of the inmate request forms to the inmates from ESP.
28 (*Id.*) All the other inmates received the necessary three copies of the inmate request form.

(*Id.* at 10.) Plaintiff wrote to Johnson, Oliver, and Scally and informed them that his Level I privileges had been stripped without any sort of procedural due process and that the grievance process was not working properly. (*Id.* at 5.) Plaintiff did not receive a response from Johnson, Oliver, or Scally. (*Id.* at 6.)

Based on these allegations, Plaintiff raises a Fourteenth Amendment due process claim (claim 1), a Fourteenth Amendment denial of access to grievance procedures claim (claim 2), a First Amendment free exercise claim (claim 3), and a First Amendment claim regarding denial of access to the prison grievance system (claim 4), which this Court construes as a Fourteenth Amendment denial of access to grievance procedures claim.

A. Fourteenth Amendment Due Process (Claim 1)

Under the Fourteenth Amendment, prisoners “may not be deprived of life, liberty, or property without due process of law.” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). However, “the fact that prisoners retain rights under the Due Process Clause in no way implies that these rights are not subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.” *Id.* “[T]here must be mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application.” *Id.* The Supreme Court held that a prisoner possesses a liberty interest under the federal constitution when a change occurs in confinement that “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” See *Sandin v. Conner*, 515 U.S. 472, 484 (1995).

When a prisoner is placed in administrative segregation, prison officials must, within a reasonable time after the prisoner’s placement, conduct an informal, non-adversary review of the evidence justifying the decision to segregate the prisoner. See *Hewitt v. Helms*, 459 U.S. 460, 476 (1983), *abrogated in part on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995). After the prisoner has been placed in administrative segregation, prison officials must periodically review the initial placement. See *Hewitt*, 459 U.S. at 477 n.9. An inmate has the right to notice and the right to be heard. *Mendoza v. Blodgett*, 960 F.2d 1425, 1430 (9th Cir. 1992). The Ninth Circuit has held that where

1 the prisoner alleges material differences between the conditions in general population
 2 and administrative segregation, the prisoner's procedural due process claim should not
 3 be dismissed on the pleadings. See *Jackson v. Carey*, 353 F.3d 750, 755-57 (9th Cir.
 4 2003).

5 The Court finds that Plaintiff states a colorable due process claim. Liberally
 6 construing the allegations in the Complaint, Johnson, Oliver, and Scally placed Plaintiff in
 7 administrative segregation without any sort of process because he was an inmate from
 8 ESP. In addition, Plaintiff was stripped of his privileges without a hearing or prior notice.
 9 Therefore, Plaintiff states a colorable due process claim against Defendants Johnson,
 10 Oliver, and Scally on screening.

11 **B. Fourteenth Amendment Denial of Access to Grievance Procedures**
 12 **(Claims 2 and 4)**

13 Prisoners have a constitutional right of access to the courts. *Lewis v. Casey*, 518
 14 U.S. 343, 346 (1996). To establish a violation of the right of access to the courts, a
 15 prisoner must establish that he or she has suffered "actual injury." *Id.* at 349. The actual-
 16 injury requirement mandates that an inmate "demonstrate that a nonfrivolous legal claim
 17 had been frustrated or was being impeded." *Id.* at 353. "The right of meaningful access
 18 to the courts extends to established prison grievance procedures." *Bradley v. Hall*, 64
 19 F.3d 1276, 1279 (9th Cir. 1995), *overruled on other grounds by Shaw v. Murphy*, 532 U.S.
 20 223, 230 n.2 (2001). "[T]he object of the denial-of-access suit, and the justification for
 21 recognizing that claim, is to place the plaintiff in a position to pursue a separate claim for
 22 relief once the frustrating condition has been removed." *Christopher v. Harbury*, 536 U.S.
 23 403, 413, (2002).

24 In claims 2 and 4 of the Complaint, Plaintiff alleges that Johnson, Oliver, Scally, Lt.
 25 Doe, and Sgt. Doe interfered with the prison grievance system by ordering that the
 26 inmates from ESP only receive one copy of the inmate request form, not the necessary
 27 three copies. (ECF No. 1-1 at 8, 10.) The Court, therefore, treats these two claims as a
 28 single Fourteenth Amendment denial of access to grievance procedures claim.

1 The Court finds that Plaintiff fails to state a colorable denial of access to grievance
 2 procedures claim on screening. Plaintiff has failed to allege that the denial of access to
 3 the grievance procedures caused him an “actual injury” by prejudicing his ability to pursue
 4 a “nonfrivolous legal claim.” *Lewis*, 518 U.S. at 349, 353. Plaintiff most likely cannot raise
 5 this claim at this time because he appears to be pursuing the same issues during this
 6 litigation that he said he could not raise in his grievances. Therefore, the Court dismisses
 7 Plaintiff’s claim of denial of access to grievance procedures without prejudice with leave
 8 to amend. If Plaintiff seeks to raise this claim in an amended complaint, he should allege
 9 how Defendants, by name, caused him to suffer an
 10 “actual injury” by prejudicing his ability to pursue a nonfrivolous legal claim.

11 **C. First Amendment Free Exercise (Claim 3)**

12 The First Amendment to the United States Constitution provides that Congress
 13 shall make no law respecting the establishment of religion or prohibiting the free exercise
 14 thereof. U.S. Const. amend. I. The United States Supreme Court has held that inmates
 15 retain protections afforded by the First Amendment “including its directive that no law shall
 16 prohibit the free exercise of religion.” *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 348
 17 (1987). “In general, a plaintiff will have stated a free exercise claim if: (1) ‘the claimant’s
 18 proffered belief [is] sincerely held; and (2) ‘the claim [is] rooted in religious belief, not in
 19 purely secular philosophical concerns.’” *Walker v. Beard*, 789 F.3d 1125, 1138 (9th Cir.
 20 2015). The Supreme Court has recognized that an inmate’s “limitations on the exercise
 21 of constitutional rights arise both from the fact of incarceration and from valid penological
 22 objectives—including deterrence of crime, rehabilitation of prisoners, and institutional
 23 security.” *Id.* “A person asserting a free exercise claim must show that the government
 24 action in question substantially burdens the person’s practice of her religion.” *Jones v.*
 25 *Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015).

26 The Court finds that Plaintiff fails to state a colorable free exercise claim. In the
 27 Complaint, Plaintiff states in conclusory fashion that he was “deprived [of] any form of
 28 religious practi[c]es” because of his being placed in a segregated housing unit. (ECF No.

1 1-1 at 9.) Plaintiff does not allege how any of the Defendants prohibited him from
2 exercising his right to free exercise of religion. Therefore, the Court dismisses Plaintiff's
3 free exercise claim without prejudice with leave to amend.

4 **D. Leave to Amend**

5 Although the Court grants Plaintiff leave to amend, it does not grant Plaintiff leave
6 to amend in any way that he sees fit. Plaintiff has leave to amend to allege additional true
7 facts to show a First Amendment free exercise claim and a Fourteenth Amendment denial
8 of access to grievance procedures claim. The Court does not give Plaintiff leave to assert
9 new claims.

10 If Plaintiff chooses to file an amended complaint, he is advised that an amended
11 complaint supersedes (replaces) the original complaint and, thus, the amended complaint
12 must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896
13 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the
14 original complaint is irrelevant; an amended pleading supersedes the original"); see also
15 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims
16 dismissed with prejudice, a plaintiff is not required to reallege such claims in a subsequent
17 amended complaint to preserve them for appeal). Plaintiff's amended complaint must
18 contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in
19 this lawsuit, including the claim(s) found cognizable in this order. Moreover, Plaintiff
20 should file the amended complaint on this Court's approved prisoner civil rights form, and
21 it must be entitled "First Amended Complaint."

22 The Court notes that if Plaintiff chooses to file an amended complaint curing the
23 deficiencies of his Complaint, as outlined in this order, Plaintiff will file the amended
24 complaint within 30 days from the date of entry of this order. If Plaintiff chooses not to file
25 an amended complaint curing the stated deficiencies, this action will proceed on Plaintiff's
26 due process claim.

III. MOTION FOR PRELIMINARY INJUNCTION

Plaintiff filed a motion for a preliminary injunction. (ECF No. 1-2.) In the motion for a preliminary injunction Plaintiff reiterates the facts in the Complaint and requests that the Court compel the Defendants in this case to reinstate his Level I status, resubmit his good-time credits, and remove the negative notations placed on the NDOC files of the inmates transferred from ESP. (*Id.* at 2.)

The legal standard for issuing a temporary restraining order and the legal standard for preliminary injunctive relief are “substantially identical.” See *Stuhlbarg Intern. Sales Co. v. John D. Bush and Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the “analysis is substantially the same for the injunction and the TRO”). Both are “extraordinary” remedies and “never awarded as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). The Supreme Court clarified that, to obtain an injunction, the plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable injury in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. The Ninth Circuit also recognizes an additional standard: “if a plaintiff can only show that there are ‘serious questions going to the merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of the hardships tips *sharply* in the plaintiff’s favor’ and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)). Furthermore, under the PLRA, preliminary injunctive relief must be “narrowly drawn,” must “extend no further than necessary to correct the harm,” and must be “the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

Here, while Plaintiff does state colorable claims in the Complaint, the Court finds that the injunctive relief that Plaintiff seeks is not narrowly drawn, and Plaintiff does not show that he would suffer irreparable harm if the Court does not provide the injunctive

1 relief he seeks. Therefore, the Court denies Plaintiff's motion for a preliminary injunction
2 without prejudice. (ECF No. 1-2.)

3 **IV. CONCLUSION**

4 It is therefore ordered that a decision on the application to proceed *in forma*
5 *pauperis* (ECF No. 1) is deferred.

6 It is further ordered that the Clerk of Court correct the docket sheet to reflect
7 Plaintiff's name as "Justin Owens" instead of "Owen."

8 It is further ordered that the motion for a preliminary injunction (ECF No. 1-2) is
9 denied without prejudice.

10 It is further ordered that the Clerk of Court file the Complaint (ECF No. 1-1) and
11 send Plaintiff a courtesy copy.

12 It is further ordered that Plaintiff's attempt to file a class action lawsuit is denied.

13 It is further ordered that Defendant State of Nevada is dismissed with prejudice as
14 amendment would be futile.

15 It is further ordered that Defendants Lt. Doe and Sgt. Doe are dismissed without
16 prejudice.

17 It is further ordered that Plaintiff's Fourteenth Amendment due process claim (claim
18 1) will proceed against Defendants Johnson, Oliver, and Scally.

19 It is further ordered that Plaintiff's Fourteenth Amendment denial of access to
20 grievance procedures claim (claims 2 and 4) is dismissed without prejudice with leave to
21 amend.

22 It is further ordered that Plaintiff's First Amendment free exercise claim (claim 3) is
23 dismissed without prejudice with leave to amend.

24 It is further ordered that, if Plaintiff chooses to file an amended complaint curing
25 the deficiencies of his Complaint, as outlined in this order, Plaintiff will file the amended
26 complaint within 30 days from the date of entry of this order.


27 It is further ordered that the Clerk of Court will send to Plaintiff the approved form
28 for filing a § 1983 complaint, instructions for the same, and a copy of the original complaint

1 (ECF No. 1-1). If Plaintiff chooses to file an amended complaint, he should use the
2 approved form, and he will write the words "First Amended" above the words "Civil Rights
3 Complaint" in the caption.

4 It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court
5 will screen the amended complaint in a separate screening order. The screening process
6 will take several months.

7 It is further ordered that, if Plaintiff chooses not to file an amended complaint curing
8 the stated deficiencies of the Complaint, this action will proceed immediately on the
9 Fourteenth Amendment due process claim.

10 DATED March 10, 2023.

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14 Gloria M. Navarro, Judge
15 United States District Court
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